

STATE: MINNESOTA

ATTACHMENT 3.1-B

Effective: July 1, 1998

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TN: 98-23

Approved: **DEC 13 1999**

Supersedes: 97-38

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24.c. Care and services provided in religious nonmedical  
health care institutions.

- Provided with no limitations.

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24.d. Nursing facility services for patients under 21 years of age:

- Same service limitations apply as those listed in item 4.a., Nursing facility services.

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24.e. Emergency hospital services:

- Emergency services means those medical services required for the immediate diagnosis and treatment of medical conditions that, if not immediately diagnosed and treated, could lead to serious physical or mental disability or death or are necessary to alleviate severe pain. Until July 1, 2001, emergency hospital services includes telemedicine consultation services as described in item 5.a., physicians' services (but only via two-way interactive video).
- An outpatient hospital service that is not an emergency but is provided in an area that is designated, equipped, and staffed for emergency services is not eligible for payment as an emergency outpatient hospital service.
- An outpatient hospital service that is not an emergency and which is provided in an area of an outpatient hospital which is advertised, represented, or held out to the public as providing acute, episodic care similar to services provided by a physician-directed clinic is not eligible for payment as an emergency outpatient hospital service.
- Medical records must document that an emergency existed at the time the service was rendered.

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25. Home and community care for functionally disabled elderly individuals, as defined, described, and limited in Supplement 2 to Attachment 3.1-B, and Appendices A-G to Supplement 2 to Attachment 3.1-B.

● Not provided.

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26. Personal care services.

Personal care services are provided by personal care provider organizations or by use of the fiscal agent option.

**A. Personal care provider organizations**

Personal care services provider qualifications:

- Personal care assistants must be employees of or under contract with a personal care provider organization within the service area. If there are not two personal care provider organizations within the service area, the Department may waive this requirement. If there is no personal care provider organization within the service area, the personal care assistant must be enrolled as a personal care provider.
- If a recipient's diagnosis or condition changes, requiring a level of care beyond that which can be provided by a personal care provider, non-Medicare certified personal care providers must refer and document the referral of dual eligibles to Medicare providers (when Medicare is the appropriate payer).
- Effective July 1, 1996, personal care assistant means a person who:
  - a) is at least 18 years old, except for persons 16 to 18 years of age who participated in a related school-based job training program or have completed a certified home health aide competency evaluation;
  - b) is able to effectively communicate with the recipient and the personal care provider organization;
  - c) is able to and provides covered personal care services according to the recipient's plan of care, responds appropriately to the recipient's needs, and reports changes in the recipient's conditions to the supervising ~~registered nurse~~ qualified professional. For the purposes of this item, "qualified professional" means a

26. Personal care services. (continued)

registered nurse or a mental health professional defined in item 6.d.A. of this attachment;

- d) is not a consumer of personal care services;  
and
  - e) is subject to criminal background checks and procedures specified in the state human services licensing act. ~~An individual who has been convicted of a crime that disqualifies persons for licensure or employment pursuant to state rule governing home care licensure, or a comparable crime in another jurisdiction, is disqualified from being a personal care assistant, unless the individual meets the rehabilitation criteria specified in the Minnesota home care licensure rule.~~
- Effective July 1, 1996, personal care provider organization means an entity enrolled to provide personal care services under medical assistance that complies with the following:
    - a) owners who have a five percent interest or more, and managerial officials are subject to a background study. This applies to currently enrolled personal care provider organizations and those entities seeking to enroll as a personal care provider organization. Effective November 10, 1997, an organization is barred from enrollment if an owner or managerial official of the organization has been convicted of a crime specified in the state human services licensing act, or a comparable crime in another jurisdiction, unless the owner or managerial official meets the reconsideration criteria specified in the state human services licensing act;

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26. Personal care services. (continued)

- b) the organization must maintain a surety bond and liability insurance throughout the duration of enrollment and provide proof thereof. The insurer must notify the Department of the cancellation or lapse of policy; and
- c) the organization must maintain documentation of personal care services as specified in rule, as well as evidence of compliance with personal care assistant training requirements.

**B. Fiscal agent option**

Under this option, the recipient and consulting professional supervise the personal care assistant in areas that do not require professional delegation. An individual may be both a consulting professional and a qualified professional.

● The recipient or responsible party:

- a) uses a fiscal agent, not a personal care provider organization. A fiscal agent assists the recipient to account for covered personal care assistant services. A fiscal agent is considered a joint employer of the qualified professional described in item A, the consulting professional described below, and the personal care assistant, and may not be related to the recipient, consulting professional, or personal care assistant. A fiscal agent or owner of the entity providing fiscal agent services must pass a criminal background check according to the state human services licensing act;
- b) uses a consulting professional (for the purposes of this item, a person meeting the qualifications for qualified professional described in item A) for help in developing and revising a plan to meet the recipient's assessed needs and for help in supervising the personal care assistant services in areas that require professional delegation, as determined by a public health nurse;

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26. Personal care services. (continued)

- c) supervises the personal care assistant if there is no qualified professional;
- d) with the fiscal agent, hires and terminates the consulting professional;
- e) with the fiscal agent, hires and terminates the personal care assistant;
- f) orients and trains the personal care assistant in areas that do not require professional delegation as determined by the county public health nurse;
- g) supervises and evaluates the personal care assistant in areas that do not require professional delegation as determined in the assessment;
- h) cooperates with the consulting professional or qualified professional and implements recommendations pertaining to the health and safety of the recipient;
- i) with the fiscal agent, hires a qualified professional to train and supervise the performance of delegated tasks done by the personal case assistant;
- j) monitors services and verifies in writing the hours worked by the personal care assistant and the consulting professional or qualified professional;
- k) develops and revises a care plan with assistance from the consulting professional or qualified professional;
- l) verifies and documents the credentials of the consulting professional or qualified professional; and
- m) together with the fiscal agent, consulting professional or qualified professional, and personal care assistant, enters into a written agreement before services begin. The agreement



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26. Personal care services. (continued)

must include:

- 1) the duties of the recipient, fiscal agent, consulting professional or qualified professional, and personal care assistant;
- 2) the salary and benefits for the consulting professional or qualified professional and personal care assistant;
- 3) the administrative fee of the fiscal agent and services paid for with that fee, including background checks;
- 4) procedures to respond to billing or payment complaints; and
- 5) procedures for hiring and terminating the consulting professional or qualified professional and personal care assistant.

The fiscal agent:

- a) enrolls in medical assistance;
- b) requests and secures background checks on consulting professionals, qualified professionals and personal care assistants according to the state human services licensing act;
- c) bills for personal care assistant and consulting professional or qualified professional services;
- d) pays the consulting professional or qualified professional and personal care assistant based on actual hours of services provided;
- e) withholds and pays all applicable federal and state taxes;

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26. Personal care services. (continued)

- f) makes the arrangements and pays unemployment insurance, taxes, workers' compensation, liability insurance, and other benefits, if any;
- g) verifies and documents hours worked by the consulting professional or qualified professional and personal care assistant; and
- h) ensures arm's length transactions with the recipient and personal care assistant.

At a minimum, consulting professionals visit the recipient in the recipient's home at least once every year. Consulting professionals and qualified professionals:

- a) report to the county public health nurse concerns relating to the health and safety of the recipient; and
- b) report to the appropriate authorities any suspected abuse, neglect, or financial exploitation of the recipient.

As part of the assessment and reassessment process in item 6.d.B. of this attachment, the following must be met to use, or continue to use, a fiscal agent:

- a) the recipient must be able to direct the recipient's own care, or the responsible party for the recipient must be readily available to direct the care of the personal care assistant;
- b) the recipient or responsible party must be knowledgeable of the health care needs of the recipient and be able to effectively communicate those needs;
- c) the recipient cannot receive shared personal care services (shared services); and
- d) a service update cannot be used in lieu of an annual reassessment.